

72nd BPSC Mains

GS-2

POLITY MODULE

(SAMPLE)



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Mains Mentorship for 72nd BPSC Mains

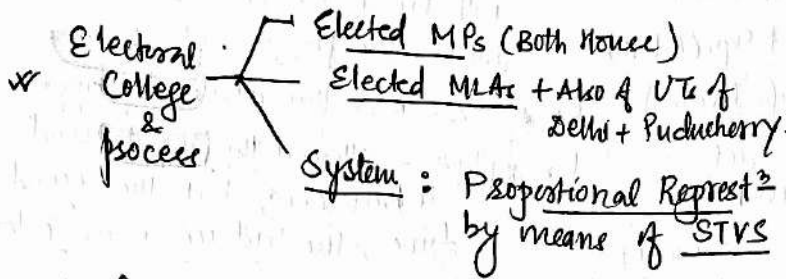
Guided By- Suraj Jha



Union Executive 2

President:

The president of India is the 1st Citizen
& Const^d head of the State U/A-52.



Impeachment: U/A 61

"only for the violation of the Const"
Quasi-judicial process

Initiation in either House → Charges signed by $\frac{1}{4}$ th of total mem. & 14 day notice

↓
1st House Resolⁿ: with spl majority ($\frac{2}{3}$ rd of total)
↓
Investigation by 2nd House
↓
if passes resolⁿ by spl. maj^{ty} then P-stands removed
*right to appear

Relationship b/w Prez & Com:

- Art-53: executive power vested in prez
- Art-74: Com with PM at the head to aid & advise the presi.
- Art-75: Com: Collectively respon. to LS
- Art-78: Duty to furnish info

power of president:

[A] Executive power: All executive action in their name.
↓
Appoint: PM, Minister, AGI, CAG, CEC etc

[B] Legislative power: - Summon & prorogue, nomination
↓
Veto power U/A-111
↓
Ordinance making power U/A-123

[C] Judicial power: Pardon power U/A-72
↓
Can grant pardon, reprieves, respite, remission, including death sentences
↓
Art-143: Advisory jurisdiction

[d] Emergency power:
NE (352), Prog Rule (355) & FE (360)

[e] Financial power - prior recomⁿ in money bill,
Budget: caused, power over Contingency fund, constitutes Finance Commⁿ

[F] International & Diplomatic & Military Powers:

Diplomatic: All agreement, treaties on his behalf.

Military: Supreme Commander of Defence forces.
↓
Can declare war/ conclude peace.
Subject to parliamentary approval

Significance:

1) Const^d safety valve - Check when executive folk.

eg. K.R. Narayan twice returned the advice to impose prog rule in UP.

2) exercise of suspensive veto - forces the naughty members to reconsider hasty law.

eg. APJ Kalam - returned office of profit bill (2002)

3) Can kill a bill by pocket veto.

eg. Prez. Giani Zail Singh - against Indian Post (Amend) Bill, 1986

4) Moral Guidance - Right to be informed (A-78)
eg. Rajendra Prasad's Concurrence over The Hindu Code Bill.

5) Corrects Judicial error with Pardon (with humanitarian angle) Power

eg. landmark Kehar Singh Case (Transfer from death to life Impr)

6) Light house in hung Parliament

eg. Shankar Dayal Sharma invited

7) Prevent military intervenⁿ in politics: symbolic decorum.



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Criticisms:

- ① Nominal executive - bound by 'Aid & Advise' (U/A-74)
cf SC in UNR Rao & Indira Gandhi
- ② weak veto power - if parliament sends same bill back, then must sign (Art-111)
(No US's qualified veto)
- ③ passive Role in Pardon - can't act independently.
cf Maru Ram case - SC: Art 72 exercise strictly on advice of prime ministry
- ④ Misuse of 356 - for Political Vendetta
cf dismissal of a state govt in 1977
- ⑤ No independent Secretariat for Inquiry - to exercise 78(A4) - relies on govt's own data
- ⑥ Appointment Politics - used for Political Rehabilitation
- ⑦ 42nd & 44th CAA - limited present discretion.
cf Young member (COM) holds real "Purse & sword"
- ⑧ Lack of Direct Mandate - indirectly elected.
- ⑨ Strong PM system often sidelines the president

Way Forward

- ① strengthening Const^l Morality - there should be a culture of Regular Consultation (Art-78)
- ② Clear codification of Convention
- define when & how discretion can be exercised
- ③ Consultation (78) + Caution (111) + Conscience (60)
= effective president
- ④ Expanding Moral influence over political Authority
- ⑤ Judicial clarification where needed

Inst^l Relationship b/w PM & prez

- ➔ Relationship is governed by the 'Trinity' of Art-74, 75 & 78.
- ① Art-74: The Binding Relationship - COM with PM at the head to aid & advise the prez.
↳ 42nd A - made this advice Binding
↳ 44th CA - allowed the prez to send it back once, but the second time, the 'advice' is an 'order'.
 - ② Art-75: The 'Appointive' Relat^{ion}
PM appointed by prez, other minister only on advice of PM
 - ③ Art-78: The 'Informative' Bridge :-
duty of the PM to communicate all decisions of the COM to the prez.

- ④ Respect for Const^l Boundaries
- ⑤ Implement recomnd of NCRWC (Venkatachaliah Comm^{ee}, 2002)

Com^{ee}: As R. Venkataram - The president is like an 'emergency lamp' - he remains dormant when power is effective, but shines when the system fails.

Rajendra Prasad - The prez is a friend, philosopher & guide to the Councils of Minister.



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Changing Role : PM & Prez :

3 phases ✓

① Phase-1 : The Nehruvian Era

→ Strong majority governments, prez was a 'counselor'. The prez's role was strictly ceremonial.

exception: R. Prasad had differences with Nehru over: Hindu Code Bill.

② Phase-2 : The Coalition Era :

(1989-2014) - No single

party majority : presidential Activism.

→ Prez became an "Arbiter".

eg. K.R. Narayan (1997) - over dismissal of Kalyan Singh govt in UP (# reconsideration)

A.P.J. Abdul Kalam - over office of Profit Bill (# returned)

Here, president was no longer a 'Rubber Stamp', but a "Constitutional Gatekeeper"

③ Phase-3 : The Resurgent Majority : present (post-2014) - Strong single party maj

→ PMO has become the centre of all

activity.

→ Era of "dignified concurrence" - Now seamless coordination

eg. Prez Kovind signed the proclamation of Abrogation of Art 370 swiftly.

→ transition from "Political Arbiter" to "Social Symbol"

eg. election of Kovind (1st Dalit Prez) & Murmu (1st Dalit Community)

represents the "Substantive Democracy" of India.

→ president as a "Global Diplomat"

PM uses the Prez's office for 'soft power diplomacy'

eg. PM Aug 2020, Quad, prez host host made of state for ceremonial banquets.

→ Acting as the "Chancellor-in-chief" - In current context of NEP 2020, prez has become very active.

eg. Murmu - frequently held conference with VC & Directors of IIT/NIT etc.

Committee/Case law :

① Venkatachaliah Commⁿ, 2020 - on Appointment & Dismissal powers

→ Appointment : in case of hung Parliament, prez should follow a clear order -

Pre-Poll alliance → Single largest party → Post-Poll Alliance

② 'Sarkaria Commⁿ' (1988)

→ In Art 356 : Prez must satisfy themselves that a "Constⁿ breakdown" has actually occurred.

③ Punchhi Comⁿ (2007) -

→ on State Bill (201) = prez should communicate the decision on State bill within 6 months to avoid paralyzing state legislatures

Singh
★ Sambhar Case vs Punjab (1974)

→ Prez is not a "Parallel executive", he must act on advice of COM.

★ V.N.R. Rao vs Indira Gandhi (1971)

→ Prez can't exercise executive power w/o the COM's advice. (even if LC is dissolved)

★ S.R. Bomai case 1994 - SC restricted the prez's power to dismiss state govt "satisfaction" of prez must be based on objective material.



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Prime Minister : "Keystone of the Cabinet Arch"

Const^l Status

- Art-74 : Aid & Advice
- Art-75 : Collective Resp.
- Art-78 : duty

power & significance :

- ① Head of the Govt : real executive Authority
- ② Leader of the cabinet : choose ministers, allocates portfolio, etc
- ③ Link b/w Prez & Cabinet : v/A-78
- ④ Leader of the parliament : decides the legislative agenda & advise Prez for summoning & prorogue
- ⑤ Chief Architect of Foreign Policy : represent India in International forum
eg G20, UN
- ⑥ Head of planning & Commⁿ - ex-officio chairman of NITI, NIC, Inter-State Council.
- ⑦ Crisis Manager-in-chief : during emergency nation looks to PM for leadership.
- ⑧ power of patronage : influence over appointment of AGI, CAG, EC, Govt etc

Criticism : ① Rise of P-ministerial Govt : PM's dominance.

eg Emergency (1975-77) & Demonstration (2016)

- ② Bypassing the legislature (ordinance Ray) :
eg initial passage of farm laws
- ③ Erosion of "Collective Responsibility" :
ministers becoming "glorified secretaries"
eg
- ④ Presidentialization of election : young local issues, focus more on personal cult
eg "Indira is India" ; "Abki bar Modi Sarkar"
- ⑤ weakening of federalism : strong PM can use govt office to destabilize state govt ruled by opposite parties.
eg UK (2016), ArP (2016)

⑥ Control over info & media - critics say.
PM's office centralizes commun. :-
eg move away from traditional press conferences to one-way Commⁿ - like "Man Ki Baat"

- ⑦ PM's influence over indept institutions like CBI, EC, or judiciary eg NAFCA Act, Appoint (Select) Panel of EC
- ⑧ The "Guillotine" of Debates : passing Budgets or Critical Bills w/o due discussion.
eg

way forward :

- ① Intro. a mandatory weekly 30 min session (UK model) where PM directly answers unscripted questions from the opposition
- ② grant official recognition to a "shadow cabinet" - to provide technical, dept specific scrutiny of PMO decisions
- ③ Decentralize the PMO - reduce the concn. of power in PMO.
- ④ Include CJI in selection panel of ~~watchdog~~ agencies - CBI, CED, CVC (4 PM, LoP, CJI)
- ⑤ Mandate quarterly meeting of Inter-State Council to make PM answerable to state CMs on federal issues.
- ⑥ open press Conference ✓
- ⑦ establish a convention requiring PM's presence during all non-confidence Motion x Motion of Thanks
- * "In a Democracy, the PM is the 1st servant of the ppl, and servants are most effective when they are most accountable."



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Right to Freedom (19-22) - often called as "Charter of Liberty"

Art-19 : The Six democratic freedoms
[SAAMRP]

- 19(1)(a) - Speech & expr- includes 'right to know' & 'silence' & 'Press freedom'
- (1)(b) - peaceful Assembly w/o Arms
 - (1)(c) - Association - includes cooperative societies (97th CAA)
 - (1)(d) - movement
 - (1)(e) - [deleted]
 - (1)(f) - profession/Trade ✓

-ve Nature - [prohibitive]

- Ex-post Facto law
 - Double Jeopardy
 - Self incrimination
 - Art-21 ✓
- } AA-20

+ve { Art 21 A : Right to Edⁿ
Art 22 : ground of Arrest & provide a lawyer

Achieving Substantive Freedom :

- ① Internet Shutdown As violation of Art 19(1)(a) & 19(1)(f) : SC
- ② Right to Forgotten - remove personal data of individual after legal case are over
- ③ Bail is the rule : Manish Sisodia case, "Bail is the rule, Jail is the exception." (to prevent prolong pretrial detention)
- ④ Right against adverse effects of climate change U/A-21 : M.K. Rajitsingh vs UoI case

Landmark Judgement

- ① A.K. Gopalan case 1950 : Narrow view ~ Art-21 only protects against Arbitrary executive Action, not bad law.
- ② Maneka Gandhi Case (1978) - Broad view - est. "Due process" - law (Just fair reasonable)
- ③ K.S. Puttaswamy Case (2017) - Privacy as FR U/A-21
- ④ Naveet Singh Johar Case (2018) ~ decriminalized homo sexuality. Linking Art 21 (dignity) & with 19 (expression)

Digital era expansion :

- ② Anuradha Bhasin vs UoI (2020)

↳ Internet as tool : right to carry on trade/business over internet is constitutionally protected.

- ① Shreya Singhal vs UoI (2015) - SC struck down sec-66A of IT Act, protected online free speech ~ "chilling effect" on digital expr. violates Art 19(1)(a)



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* "Right to Not form an Association" (19(1)(c)) | Right to close Business VIA-19(1)(g) (Excel wear case - 1978)

* In Kaushal Kishore Singh Case (2023)

↳ SC Ruled: FRs VIA-19 & 21 can be enforced even against private individuals, not just the 'state'

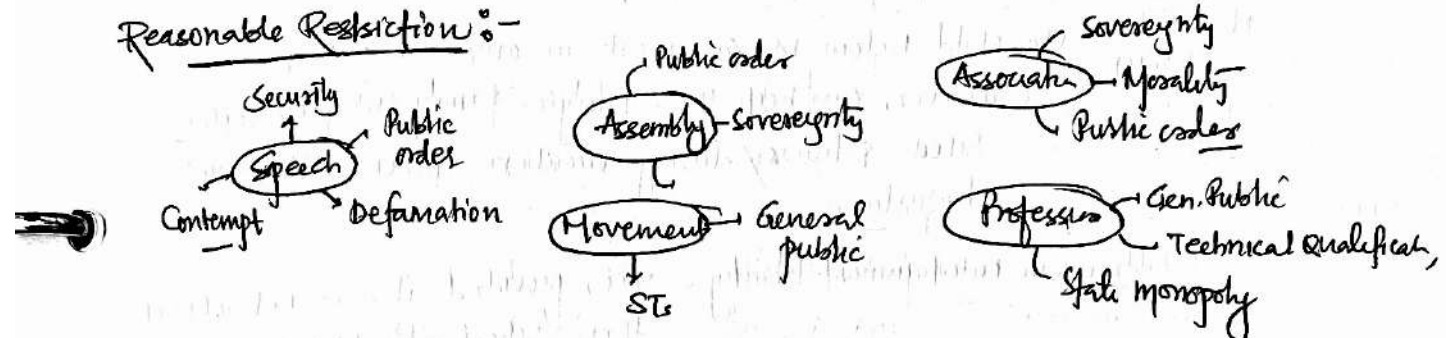
* Raj Narain Case (1975) - Right to know flows from Art 19(1)(a)

* PVCL Case (2003) - Voter's Right to know candidate background recognised.
↳ Led to RTI Act, 2005

* Romesh Thappor vs State of Madras Case (1950)

↳ laid foundⁿ for press freedom

Reasonable Restriction :-



SC in Chintaman Rao vs MP Case -

Reasonable restriction is reasonable only if { It is proportionate
Rational Nexus (RAP)
Not Arbitrary.

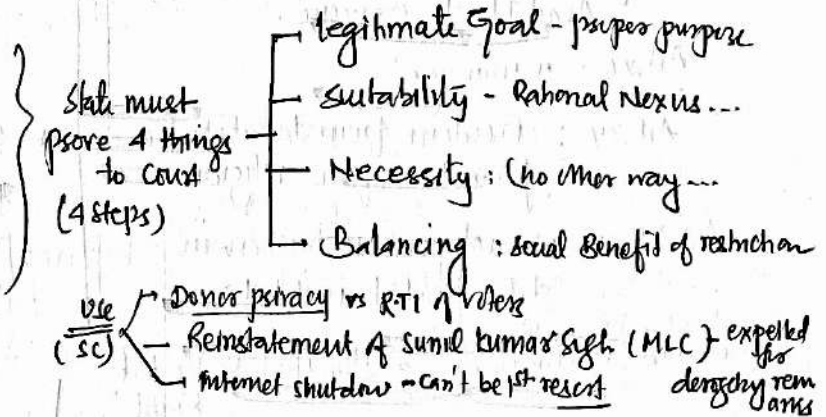
of in Bihar: Alcohol prohibition law

- a Reasonable Restriction on Art 19(g)

in interest of Public Health & Morality ✓

Doctrine of proportionality -

modern litmus test used by SC to decide if a govt restriction on our freedom (Art 19) is truly "reasonable" or just an excuse to suppress Rights.



Right Against Exploitation (Art-23 & 24)

(Moral Bedrock of the Constitution)

* Art-23 : Prohibition of forced labour & Trafficking

⇒ Human Trafficking, (Includes forced prostitution & modern Slavery)

⇒ Begar / Forced labour - Asiad worker case - SC: paying < less than Minimum wage = forced labour

Bandhua Mukti Morcha Case - SC

Bonded labour violates Art 23 & 24: State has the duty to identify bonded labourers & Release & rehabilitate them.

* only exception - state can impose "Compulsory Service for Public
Art 23(2) Purpose" - during National emergency & (however
 no disc. on the basis of religion, race, caste or class)

Art - 24 : Prohibition of child labour

⇒ No child < 14 yrs - in any hazardous employment ✓ - carpet weaving
 (Firecrackers, Bidi making etc)

* M.C. Mehta vs TN Case - SC ordered

Creation of a 'Child Labour Rehabilitation Welfare fund' ✓
 [Employer's fine here]

New Rules - (2016) - No child below 14 can work in any occupation.
 (however, can help their family or family enterprise after
 school & hours / during vacations, provided it is not
 hazardous.)

Children - in entertainment industry - Yes, provided it does not affect
 their school ed. (21A)

Right to freedom of Religion (25-28)

"Cornerstone of Indian Secularism" { Positive ✓
Interventionist ✓

Art 25 : Freedom of Conscience & Religion
 ↳ Available to everyone.

Art 26 : Manage

Art 27 : Freedom from taxation for
promotion of a religion.

Art 28 : No religious instruction in
state funded institution.

Reasonable Restrictions : "The Most Restricted
Right"

① General Restriction - Art 25 | 26

⇒ Public order - no religious prac. can disturb
 peace

⇒ Morality - prac. that are socially degrading
 can be banned.

⇒ Health - during Covid-19 : SC upheld gathering
 Right to life > Right to Religion

② Specific Restrictions : Art 25

if a religious prac violates Art 14, 21, the
 religion must give away. eg Sabarimala Case (2018) - 4 Indian Young Lawyer Assn. Case (2018)

Triple Talaq Case (2017)

* Stanislaus vs State of MP (1977) - propagation
 does not include forcible conversion,
 but voluntary conversion allowed.

* Shirur Mutt Case (1954) - only Essen-
tial Religious practice (ERP) are
 protected.

"state can regulate secular activities
 associated with religion."

↓
 Enable social reform, while
 protecting core faith.

eg VCC, temple mgt, Hijab &
 Dress Code debate, Triple Talaq

* Shayara Bano Case (2017) - Instant
 triple talaq : invalidated ✓

* S.R. Bommai Case (1994) - Secularism
 is a Basic structure of the Const)



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